

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DOUGLAS ADAMS and TRINA ADAMS,  
husband and wife,

Plaintiff,

v.

LUANNE C. TUNMORE and JOHN DOE  
TUNMORE, wife and husband, and  
the CONFEDERATED TRIBES OF THE  
COLVILLE RESERVATION,

Defendant.

No. CV-05-270-FVS

ORDER DENYING MOTION  
TO REMAND TO STATE COURT

**BEFORE THE COURT** is the Plaintiffs' Motion to Remand to State Court, Ct. Rec. 8. The Court held a telephonic hearing on November 3, 2005. Plaintiffs were represented by Thomas Janisch. Defendants were represented by Everett Coulter, Jr. This Order is intended to memorialize and supplement the Court's oral ruling.

**I. BACKGROUND**

This case involves an action for damages stemming from a motor vehicle accident on August 8, 2002, between Plaintiff Trina Adams and Defendant Luanne Tunmore. The accident occurred on a Washington State highway. At the time of the accident, Defendant Tunmore was allegedly operating a vehicle in the course and scope of her employment with the Paschal Sherman Indian School (hereinafter "PSIS"). The vehicle was registered to the Colville Confederated

1 Tribes of the Colville Reservation (hereinafter the "Tribe"). PSIS  
2 is operated by the Tribe pursuant to a grant from the United States  
3 Department of Interior, Bureau of Indian Affairs, which is commonly  
4 referred to as a Public Law 100-297 Tribally Controlled School Grant.  
5 Plaintiffs' Complaint alleges negligence on the part of Defendant  
6 Tunmore and vicarious liability against the Tribe.

7 Plaintiffs originally filed this suit on August 5, 2005, in  
8 Okanogan County Superior Court. Defendants filed a petition for  
9 removal to federal court on September 6, 2005, under 28 U.S.C. §§  
10 1441 and 1442, asserting this Court has original jurisdiction over  
11 this action under 28 U.S.C. § 1346(b). Plaintiffs now move to remand  
12 this case back to state court pursuant to RCW 37.12.010(8), which  
13 allows the State of Washington to exercise jurisdiction over an  
14 action for damages for negligence arising from a vehicle accident on  
15 a State highway.

## 16 **II. DISCUSSION**

17 Because Defendants removed this case to federal court, they bear  
18 the burden of proving removal was appropriate and that this Court has  
19 jurisdiction. See *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.  
20 1992). Defendants contend removal was appropriate because Congress  
21 has provided that a tort action committed in fulfillment of a  
22 Tribally Controlled School Act grant between the United States and a  
23 Native American Tribe invokes coverage under the Federal Tort Claims  
24 Act. Thus, Defendants contend removal was proper because there is  
25 federal question jurisdiction.

26 Public Law No. 101-512, Title III, § 314 (1990) provides, in

1 relevant part:

2 With respect to claims resulting from the performance of  
3 functions ... under a contract, grant agreement, or ... by  
4 Tribally Controlled School Grants of the Hawkins-Stafford  
5 Elementary and Secondary School Improvement Amendments of  
6 1988, ... an Indian tribe, tribal organization or Indian  
7 contractor is deemed hereafter to be part of the Bureau of  
8 Indian Affairs in the Department of the Interior ... while  
9 carrying out any such contract or agreement and its  
10 employees are deemed employees of the Bureau or Service  
while acting within the scope of their employment ... any  
civil action or proceeding involving such claims brought  
hereafter against any tribe, tribal organization, Indian  
contractor or tribal employee covered by this provision  
shall be deemed to be an action against the United States  
and will be defended by the Attorney General and be  
afforded the full protection and coverage of the Federal  
Tort Claims Act[.]

11 25 U.S.C. § 450f Note. In other words, if at the time of the  
12 collision, Defendant Tunmore was acting within the course and scope  
13 of her employment pursuant to a Tribally Controlled School Grant, the  
14 torts or negligent acts of her and the Tribe are deemed acts of the  
15 United States and are subject to the Federal Tort Claims Act. See  
16 *e.g., Comes Flying v. United States Bureau of Indian Affairs*, 830  
17 F.Supp. 529, 529-30 (D. S.D. 1993); *Waters v. United States*, 812  
18 F.Supp. 166, 168 (N.D. Cal. 1993). Thus, the Court would have  
19 original jurisdiction and removal would be proper under 28 U.S.C.  
20 §§ 1441(b) and 1442. Therefore, the controlling question is whether  
21 Defendant Tunmore was acting in the course and scope of her  
22 employment with PSIS and was serving under a Tribally Controlled  
23 School Grant.

24 Here, the PSIS is operated by the Tribe pursuant to a Tribally  
25 Controlled School Grant, Public Law 100-297, with the United States  
26 Department of Interior, Bureau of Indian Affairs. This grant has

1 been commonly referred to as the "Augustus F. Hawkins-Robert T.  
2 Stafford Elementary and Secondary School Improvement Amendments of  
3 1988" and codified in part under 20 U.S.C. § 2701. Plaintiffs  
4 concede that Ms. Tunmore was acting in the course and scope of her  
5 employment with the PSIS at the time of the collision. Therefore,  
6 the Court determines the collision is subject to the Federal Tort  
7 Claims Act, over which the Court has original jurisdiction. Thus,  
8 removal was proper and the motion for remand is denied. Accordingly,

9 **IT IS HEREBY ORDERED** that the Plaintiffs' Motion to Remand to  
10 State Court, **Ct. Rec. 8**, is **DENIED**.

11 **IT IS SO ORDERED.** The District Court Executive is hereby  
12 directed to enter this Order and furnish copies to counsel.

13 **DATED** this 7th day of November, 2005.

14  
15 s/ Fred Van Sickle  
Fred Van Sickle  
16 United States District Judge  
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